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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,076	08/22/2003	Yuichi Mori	51015/DBP/A400	9698

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EXAMINER	
GELLNER, JEFFREY L	
ART UNIT	**PAPER NUMBER**
3643	

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/647,076	MORI ET AL.	
	Examiner	Art Unit	
	Jeffrey L. Gellner	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 March 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4, 7, 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weder et al. (US 5,363,592) in view of Schur (US 3,097,787).

As to Claims 1, 12-15, Weder et al. discloses a plant-cultivating container (28 of Fig. 3) having a receiving portion (36 of Fig. 3) for receiving a plant body; the container having at least a portion of it being a vapor-permeable portion comprising a non-porous hydrophilic film ("cellophane" of col. 2 line 52) to which substantially no hydrophobic porous film is superimposed (in Fig. 4 is decorative layer 44 is burlap (see col. 4 lines 3-8)), wherein the selective moisture vapor-permeable portion prevents direct contact between the receiving portion and external water, the selective moisture vapor-permeable portion not allowing water to pas therethrough, but allowing water vapor to pass therethrough. Not disclosed is a material other than cellophane. Schur, however, discloses the use of cellophane or substitutes for cellophane, such as cellulose acetate or PVA, that are vapor permeable and liquid impermeable (col. 2 lines 38-40; col. 3 lines 33-45; col. 4 lines 1-13; col. 5 lines 25-33). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of

Weder et al. by using a substitute material such as cellulose acetate or PVA as disclosed by Schur depending upon desired characteristics needed in the film.

As to Claim 2, Weder et al. as modified by Schur further disclose the moisture vapor-permeable portion permeability of 1 x 10^3 g/m^2 per 24 hr (from Applicant's specification where cellophane is listed in page 13 line 16 as an acceptable moisture vapor-permeable material).

As to Claims 3 and 4, Weder et al. as modified by Schur further disclose the ratio of vapor-permeable portion to total surface area is 20% or more or the total surface area (Figs. 1 and 3 of Weder et al.).

As to Claim 7, Weder et al. as modified by Schur further disclose a perforated plate (Weder et al. at Fig. 3 in that 38 is a perforation).

Claims 5 and 6 rejected under 35 U.S.C. §103(a) as being unpatentable over Weder et al. (US 5,363,592) in view of Schur (US 3,097,787).

As to Claims 5 and 6, the limitations of Claim 1 are disclosed as described above. Weder et al. further discloses the selective moisture vapor-permeable portion a composite material (col. 2 lines 56-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Weder et al. as modified by Schur by adding water permeable material, for example burlap, to the container to add support or thickness and to place on the outside to meet consumer demand.

Claims 8-11 and 16-18 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sakai (JP 7-45169) in view of Weder et al. (US 5,363,592) in further view of Schur (US 3,097,787).

As to Claims 8 and 16-18, Sakai discloses a plant container (1 of Fig. 1) having a receiving portion for a plant body (9 of Fig. 1); the container having a portion that is a selective vapor-permeable portion (2 of Fig. 1) which has no hydrophobic film superimposed (6 of Figs. is not a hydrophobic film - see translation at page 10); a plant body in the container (Fig. 1); and cultivating the plant with the selective moisture vapor-permeable portion in contact with water and preventing direct contact between the plant body and external water (see Fig. 1). Not disclosed is the selective moisture vapor-permeable portion a film and the film other than cellophane. Weder et al., however, discloses the selective moisture vapor-permeable portion being a film ("cellophane" of col. 2 lines 48-52) and Schur discloses the substitution of cellophane with cellulose acetate or PVA, that are vapor permeable and liquid impermeable (col. 2 lines 38-40; col. 3 lines 33-45; col. 4 lines 1-13; col. 5 lines 25-33). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Sakai by using the film of Weder et al. so as to find more use for the film so as to increase sale and to use cellulose acetate or PVA depending upon desired characteristics needed in the film. The container of Sakai as modified by Weder et al. and Schur inherently perform the method steps recited in Claim 8.

As to Claim 9, Sakai as modified by Weder et al. and Schur further disclose the water being temperature controlled water (in that all water has an temperature that is controlled by the ambient environment).

As to Claims 10 and 11, Sakai as modified by Weder et al. and Schur further disclose salt water (10 of Fig. 1).

Response to Arguments

Applicant's arguments filed 29 March 2006 have been fully considered but they are not persuasive. Applicants' arguments is that (1) neither Weder et al. nor Sakai disclose the use of a film other than cellophane (Remarks page 6); and, (2) the Declaration of Akihiro Okamoto proffers evidence of unexpected results achieved by use of a non-porous film of a material other than cellophane (Remarks page 6 and 7).

As to argument (1), Examiner has used the Schur reference for its teaching that cellophane can be substituted with by films with other chemical compositions.

As to argument (2), to show evidence of unexpected results there must be ""results in fact unexpected and unobvious and of both statistical and practical significance"" (MPEP 716.02(b) I citing *Ex parte Gelles* 22 USPQ2d 1318).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stevens discloses in the prior art the use of cellophane and other films in a container.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

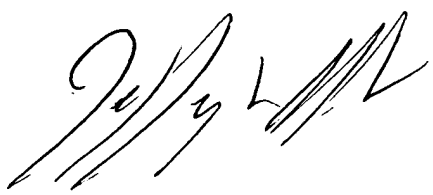
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jeffrey L. Gellner
Primary Examiner
Art Unit 3643